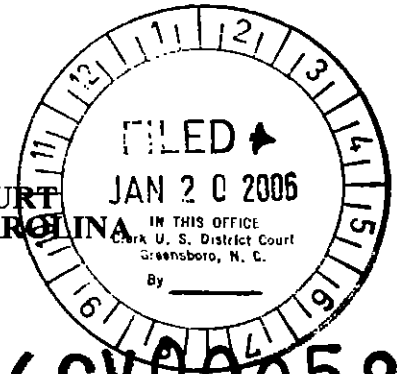


60(b).frm

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



George Estrada,

Petitioner,

v.

United States of America,

Respondent.

1:06CV00058
4:97CR19-1

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted a pleading seeking relief from a criminal judgment pursuant to Federal Rules of Civil Procedure, Rule 60(b). Rule 60(b) is not applicable to criminal proceedings and, consequently, a party may not seek relief from a criminal conviction under Fed. R. Civ. P. 60(b). See Fed. R. Civ. P. 1; see also United States v. Mosavi, 138 F.3d 1365, 1366 (11th Cir. 1998). Rather, petitioner's pleading should be construed as a request for habeas relief pursuant to 28 U.S.C. § 2255. See Gonzalez v. Crosby, __ U.S. __, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005); United States v. Winestock, 340 F.3d 200 (4th Cir. 2003). As such, petitioner's pleading is defective because he has failed to file his claims on the proper Section 2255 forms. See Rules Governing Section 2255 Proceedings Rule 2(b).

IT IS THEREFORE ORDERED that the clerk send petitioner a copy of this recommendation, forms for filing Section 2255 actions in this Court, and instructions.

IT IS THEREFORE RECOMMENDED that petitioner's "Rule 60(b)" motion be construed as an attempt by petitioner to file a Section 2255 action and dismissed without prejudice to petitioner filing a new action on the proper forms.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: January 20, 2006